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## 2005 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

5-11-2005

# USA v. Harrison

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 02-4030

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UNITED STATES OF AMERICA,

v.

MICHAEL HENRY HARRISON,  
a/k/a Emmanuel Henry Harrison, III

Michael Henry Harrison,

Appellant

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. No. 01-cr-00025-1E)

District Judge:

The Honorable Maurice B. Cohill, Jr.

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ARGUED September 3, 2003

DECIDED February 6, 2004

ON REMAND from the Supreme Court of the United States  
January 24, 2005

BEFORE: SLOVITER, NYGAARD, and ROTH, Circuit Judges.

(Filed May 11, 2005)

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OPINION OF THE COURT

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NYGAARD, Circuit Judge.

This matter is before us on remand by the United States Supreme Court. By opinion filed February 6, 2004, we affirmed the District Court's judgment of conviction and sentence. On January 24, 2005, the Supreme Court granted the motion of Petitioner Michael Henry Harrison for leave to proceed in forma pauperis and granted his petition for writ of certiorari. The Court vacated the judgment of this Court and remanded for further consideration in light of *United States v. Booker*, 543 U.S. \_\_\_, 125 S. Ct. 738 (2005).

Because Harrison pleaded guilty, the sole issue he raised in his original appeal concerns the validity of the sixty-three month sentence imposed by the District Court for trafficking child pornography. Now, Harrison requests that we remand the matter to the

District Court for resentencing in light of *Booker*. Having determined that the sentencing issues Harrison raises are best determined by the District Court in the first instance, we will vacate that portion of our judgment that affirmed the judgment of sentence and remand to the District Court for reconsideration and, if that court deems it appropriate, for resentencing in accordance with *Booker*.

For the foregoing reasons, we will affirm the conviction, vacate the sentence and remand to the District Court for resentencing.